

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

REGINALD BYRON CLEMONS,)	
)	
Plaintiff,)	
)	
v.)	No. 4:22-cv-158-SRW
)	
MICHELLE BASHAM, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Reginald Clemons' motion for leave to amend. ECF No. 26. Plaintiff initiated this action *pro se*. See ECF No. 1. After initiation, the Court granted Plaintiff's motion to proceed *in forma pauperis* and directed him to file an amended complaint to cure pleading deficiencies. ECF No. 9. Upon review of the *pro se* amended complaint, the Court dismissed some claims under 28 U.S.C. § 1915(e)(2) but directed that process issue against defendant Carl Hart, in his individual capacity, on Plaintiff's excessive force claim. ECF No. 13. Defendant Hart was served on January 26 and his answer was due on February 16. ECF No. 25. However, on February 10, counsel entered their appearance for Plaintiff and on February 15, Plaintiff's counsel requested thirty (30) days to file a second amended complaint. ECF Nos. 22-26. The motion to amend "further requests that the Court refrain from *sua sponte* dismissal of any portion of the *pro se* Amended Complaint under the PLRA, 28 U.S.C. § 1915A." ECF No. 26 at 2.

As leave to amend should be freely given when justice so requires, the Court will allow Plaintiff thirty (30) days to file a second amended complaint. See Fed. R. Civ. P. 15(a)(2). However, because Plaintiff is proceeding *in forma pauperis* in this action, his pleadings are subject

to review by this Court under 28 U.S.C. § 1915(e)(2). Furthermore, Plaintiff is a prisoner, so if his second amended complaint seeks “redress from a governmental entity or officer or employee of a governmental entity,” it may also be subject to review under 28 U.S.C. § 1915A. Therefore, to the extent that Plaintiff’s motion requests no further review of his “*pro se* Amended Complaint,” the Court has completed review of that complaint. Nevertheless, Plaintiff should be aware that as long as he is proceeding *in forma pauperis*, his second amended complaint will be subject to review under 28 U.S.C. § 1915 for frivolousness, maliciousness and/or failure to state a claim. If Plaintiff no longer seeks to proceed *in forma pauperis*, he must pay the full filing fee and file a motion to withdraw the motion to proceed *in forma pauperis*.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s motion to amend [ECF No. 26] is **GRANTED**. Plaintiff shall file his second amended complaint within thirty (30) days of the date of this Order.

Dated this 21st day of February, 2023.



STEPHEN R. WELBY
UNITED STATES MAGISTRATE JUDGE